IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRI.WRIT PETITION NO.1558 OF 2005

Shri Anil Umrao Gote, .. **Petitioner**
Vs
State of Maharashtra & Anr. .. **Respondents**

Shri Anil Umrao Gote, in-person -petitioner.
Mrs Rajeshree Gadhari, APP for the State -Respondent no.1.
Mr. Raja Thakore with Mr A.M.Chimalkar for the CBI for respondent no.2.

CORAM : B.H.MARLAPALLE & D.B.BHOSALE,JJ.
DATE : APRIL 19, 2006.
PC:

1. This petition filed under Article 226 of the Constitution of India by an accused under the Maharashtra Control of Organised Crime Act, 1999, prays for the following substantial reliefs:-

(a) to declare that the provisions of the Maharashtra Control of Organized Crime Act, 1999 cannot be made applicable to him,

(b) the final report dated 15.9.2003 in so far as the petitioner is concerned, be declared as illegal and bad in law and quash the same.

(c) to issue a writ of mandamus and/or order in the similar nature, directing the respondents to forthwith withdraw the charges under the MCOC Act against the petitioner and as contained in the final report dated 15.9.2003.

2. The petitioner came to be arrested on 29.6.2003 on

the basis of the FIR filed on 7.6.2002. A proposal for seeking sanction against him under section 23(1) of the said Act was submitted to the competent authority and the provisions of the Act were made applicable to the petitioner on 28.8.2003. Though the first chargesheet was filed on 3.9.2002, the supplementary chargesheets came to be filed on 25.11.2002, 15.1.2003,29.1.2003, and 3.2.2004. Consequent to the order passed by the Supreme Court, the case was handed over to the Central Bureau of Investigation (CBI) and the said agency lodged the FIR on 23.3.2004. It submitted a proposal for approval under section 23(1) of the Act on 7.4.2004 and the approval was granted on 12.4.2004. The CBI filed the chargesheet on 26.7.2005. The petitioner is impleaded as accused no.45 in Special Case No.2 of 2003.

3. The petitioner had approached this Court in the earlier rounds in Criminal Application Nos 3978 of 2004 and 3979 of 2004. In the second application he had prayed for being released on bail, whereas in the first application he had challenged the order passed by the learned Special Judge on 23.7.2004, below Exhibit 396, rejecting the petitioner’s prayer for discharge from the alleged offences and to set him at liberty. Both these applications came to be dismissed by the learned Single Judge on 3.11.2004, i.e. before the CBI filed the chargesheet on 26.7.2005 and against the said order the

petitioner had approached the Apex Court and it appears that the Special Leave Petition came to be disposed off as withdrawn with liberty to him to approach this Court afresh with a prayer for being released on bail. Accordingly, he has filed Criminal Application No.7547 of 2006 which is coming up before the learned Single Judge on 25.4.2006 and it is not the petitioner's case that he was granted liberty to approach this Court afresh for being discharged as an accused under the MCOC Act.

4. The petitioner appeared as a party in-person and submitted the written notes of arguments and relied upon the following decisions of the Apex Court: (a) State of Haryana Vs. Bhajan Lal, AIR 1992 SC 604; (b) G.P.Nayyar Vs. State (Delhi Administration), AIR 1979 SC 602, (c) Ranjitsing Brahmajeetsingh Sharma - AIR 2005 SC 2277, and also a decision of this Court in the case of Lalit Somdatta Nagpal V. Dr Satyapal Singh, 2006 (1) LJ SOFT (URC) 1. In short, the petitioner claims that the filing of double chargesheets on the same FIR is illegal, there is noncompliance of mandatory requirements of section 23(1)(a) of the MCOC Act, the alleged offences which have taken place before the MCOC Act was brought into force cannot be covered under the said Act and, therefore, his trial is hit by Article 20(1) of the Constitution. In any case, the alleged offences fall under Chapter XII and XVII of the IPC and cannot be included in the definition of the

organised crime under section 2(a) of the MCOC Act. The petitioner, therefore, prays that he has made out a case for being discharged as an accused from Special Case No.2 of 2003 presently pending for trial under the MCOC Act before the learned Special Judge at Pune.

5. As we have noted hereinabove, after the case was handed over to the CBI pursuant to the directions of the Apex Court, the FIR has been filed by the CBI on 23.3.2004 and the chargesheet has been submitted on 26.7.2005. Approval under section 23 (1)(a) of the MCOC Act has been granted on 12.4.2004 by the competent authority. The petitioner's prayer for being discharged by invoking powers under section 482 of Cr.P.C or by setting aside the order passed by the learned Special Judge rejecting his application, has already been turned down by this Court in Criminal Application No.3978 of 2004. So far as the remaining prayers are concerned, i.e. final report dated 15.9.2003 submitted by the SIT, it is for the trial Court to consider the same based on the evidence that may be placed before it during the course of trial and through documents as well as oral depositions. Whether the charges levelled against the petitioner would fall within the ambit of the MCOC Act or they would be covered under the IPC, are the issues which fall in the realm of the trial Court and are required to be decided on the basis of the evidence placed before it. We, therefore, do not see

any reason to entertain this petition under Article 226 of the Constitution of India at this stage and more so when we are informed by Mr Thakore, learned counsel for the CBI, that the Special Case is coming up before the trial Court on 24.7.2006 for compliance of the requirements under section 207 of the Cr.P.C and thereafter the trial Court will take steps for compliance with the requirements of section 226 of Cr.P.C. and the trial will commence. We are also informed by the Registrar General of this Court that precautions have been taken to ensure that the learned trial Judge, even if due for transfer, his successor would be posted at the earliest possible in the event of such a transfer so that there is no delay caused on this count in commencing the trial. We hope, once the trial commences it will be continued on day-to-day basis as per section 309 of Cr.P.C. We also make it clear that the view expressed by us in this order would not come in the way of the petitioner in arguing before this Court for being released on bail, which application bearing no.7547 of 2005 is scheduled to come up before the learned Single Judge on 25th of this month. The petition is, therefore, rejected summarily.

. A copy of this order be forwarded to the learned Special Judge under the MCOC Act, Pune as well as the accused who is presently detained in Yerawada Central Prison, Pune.

(D.B.BHOSALE, J.) **(B.H.MARLAPALLE,J.)**